

Paul A. Stewart (SBN 153,467)
 paul.stewart@knobbe.com
 Michael K. Friedland (SBN 157,217)
 michael.friedland@knobbe.com
 Lauren Keller Katzenellenbogen (SBN 223,370)
 lauren.keller@knobbe.com
 KNOBBE, MARTENS, OLSON & BEAR, LLP
 2040 Main Street
 Fourteenth Floor
 Irvine, CA 92614
 Phone: (949) 760-0404
 Facsimile: (949) 760-9502

Attorneys for Defendant
 MERAS ENGINEERING, INC.

Jaye G. Heybl (SBN 167,119)
jheybl@koppelpatent.com
 KOPPEL PATRICK HEYBL & PHILPOTT
 2815 Townsgate Road
 Westlake Village, CA 91361
 Phone: (805) 373-0060
 Facsimile (805) 373-0051

C. Kevin Speirs (*pro hac vice*)
kspeirs@parsonsbehle.com
 Kristine E. Johnson (*pro hac vice*)
kjohnson@parsonsbehle.com
 PARSONS BEHLE & LATIMER
 201 South Main Street, Suite 1800
 Salt Lake City, UT 84111
 Phone: (801) 532-1234
 Facsimile: (801) 536-6111

Attorneys for Defendants
 HOUWELING'S NURSERIES
 OXNARD, INC.;
 HNL HOLDINGS LTD.;
 HOUWELING UTAH
 OPERATIONS, INC.; AND
 HOUWELINGS NURSERIES LTD.

IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

CH₂O, INC.,

Plaintiff,

v.

MERAS ENGINEERING, INC.;
 HOUWELING'S NURSERIES
 OXNARD, INC.; HNL HOLDINGS
 LTD.; HOUWELING UTAH
 OPERATIONS, INC.; AND
 HOUWELINGS NURSERIES LTD.,

Defendant.

) Civil Action No.
) 2:13-cv-08418-JAK-GJS
)
) **DEFENDANTS' OBJECTIONS**
) **TO PLAINTIFF'S**
) **APPLICATION TO TAX**
) **COSTS**

) Hon. John A. Kronstadt
)
)
)

1 Meras Engineering, Inc. (“Meras”); Houweling’s Nurseries Oxnard, Inc.;
2 HNL Holdings Ltd.; Houweling Utah Operations, Inc.; and Houweling’s
3 Nurseries Ltd. (“Houwelings”) (collectively, “Defendants”), through their
4 counsel, submit the following Objections to CH₂O, Inc.’s (“CH₂O”)
5 Application to Tax Costs.

6 **I. INTRODUCTION**

7 CH₂O seeks to recover \$79,731.74 in costs from Defendants. The costs
8 span six areas: (1) filing fees, (2) service of process fees, (3) reporter transcripts,
9 (4) depositions, (5) witness fees; and (6) certification, exemplification and
10 reproduction of documents. Each area, however, contains costs that are not
11 allowed by law. In total, CH₂O’s application includes \$33,806.64 that are not
12 recoverable. Defendants object to these costs and request that the Court deduct
13 that amount from CH₂O’s application.

14 **II. OBJECTIONS**

15 Federal Rule of Civil Procedure 54(d) allows the prevailing party to
16 recover its costs. Those costs, however, are limited by statute (28 U.S.C. §
17 1920) and the local rules of each court. The Civil Local Rules in the Central
18 District of California (“Local Rules”) list 13 categories of recoverable costs.
19 *See* Local Rules 54-3.1 to 54-3.13. Any cost outside those categories cannot be
20 recovered.

21 Here, CH₂O requests thousands of dollars in costs that do not fall within
22 the local rules. The following table summarizes those costs and subsequent
23 subsections state the grounds for Defendants’ objections.

Category	Requested Amount	Contested Cost	Contested Amount
Filing Fees	\$ 809.50	Pro Hac Vice Filing Fee CH ₂ O includes pro hac vice filing fees. Local Rule 54-3.1 states that pro hac vice fees are not recoverable.	\$ 325.00
Service of Process	\$ 1,866.08	Rush Service of Process CH ₂ O includes rush service of process	\$ 125.00

Category	Requested Amount	Contested Cost	Contested Amount
		fees. Courts have found that rush service of process fees are not recoverable.	
Depositions	\$ 40,698.04	Realtime Services CH ₂ O includes costs for Realtime services. Courts have found that Realtime services are not recoverable. Rough Draft Transcripts CH ₂ O includes costs for rough draft transcripts. Courts have found that rough draft transcripts are not recoverable.	\$ 14,170.79
Reporter's Transcripts	\$ 18,855.66	½ Cost of Trial Transcript plus Rough Draft Transcripts CH ₂ O includes costs for the entire trial transcript, as well as rough draft transcripts. The parties should share the cost of the trial transcript, and courts have found that rough draft transcripts are not recoverable.	\$ 11,501.95
Witness Fees	\$ 8,932.00	Preparation Time CH ₂ O includes costs for witnesses staying several days before and after the trial. Local Rule 54-3.6 only allows witness fees for attending trial proceedings.	\$ 3,774.00
Certification, exemplification and reproduction of documents	\$ 8,568.46	Copies of Depositions CH ₂ O includes costs for copying documents in preparation for depositions. Local Rule 54-3.10 does not allow for those costs.	\$ 3,909.90
Total	\$ 79,731.74		\$ 33,806.64

A. Filing Fees

Civil Local Rule 54-3.1 allows the prevailing party to recover all “[f]iling fees paid to the Clerk” *except* “pro hac vice filing fees.” Here, CH₂O includes \$325 in costs for pro hac vice filing fees. (Dkt. 461-2 at 4, 6-7). Defendants object to those costs.

1 **B. Service of Process**

2 Civil Local Rule 54-3.2 allows the prevailing party to recover “[f]ees for
3 service of process.” The rule, however, does *not* include fees for expedited
4 service. Indeed, courts have found that rush service of process fees are not
5 generally recoverable. *See Intellect Wireless, Inc. v. HTC Corp.*, No. 09 C
6 2945, 2015 WL 136142, at *10 (N.D. Ill. Jan. 8, 2015) (excluding rush service
7 of process fees because the prevailing party did not prove they were necessary);
8 *see also B.W.A. v. Farmington R-7 Sch. Dist.*, No. 4:06CV1691, 2009 WL
9 724005, at *2 (E.D. Mo. Mar. 17, 2009) (“As Defendants have not demonstrated
10 the rush service was necessary, the Court reduces Defendants' bill of costs”).

11 Here, CH₂O includes five service of process receipts that include “Rush
12 Fees.” (Dkt. 461-2 at 9, 16-19.) Four of those receipts itemize the cost of the
13 rush fees, equaling \$25 on average. (*Id.* at 16-19.) One receipt does not itemize
14 the cost. (*Id.* at 9.) Assuming the non-itemized rush fee costs the same as the
15 average itemized rush fee (\$25), CH₂O’s total expedited service fees equal
16 \$125. Defendants object to those costs and request the Court to deduct that
17 amount from CH₂O’s application.

18 **C. Depositions**

19 Local Rule 54-3.5 allows the prevailing party to recover the “[c]osts
20 incurred in connection with taking oral depositions,” and lists the specific costs
21 that are recoverable. That list does *not* include Realtime services or rough draft
22 transcripts. *Id.* at 54-3.5(a). Indeed, courts have found that Realtime services
23 and rough draft transcripts are not recoverable. *See TransPerfect Global, Inc. v.*
24 *MotionPoint Corp.*, Case No. 10-cv-02590, 2014 WL 1364792, at *4 (N.D. Cal.
25 Apr. 4, 2014) (denying costs for Realtime); *see also Alternative Med. &*
26 *Pharmacy, Inc. v. Express Scripts, Inc.*, No. 4:14 CV 1469 CDP, 2016 WL
27 3443574, at *3 (E.D. Mo. June 23, 2016) (“[R]ealtime transcript and laptop fees
28 and ASCII fees for depositions are also not recoverable as they were incurred

for the convenience of counsel and not necessarily obtained for use in the case.”); *see also Brown v. The McGraw-Hill Companies, Inc.*, 526 F. Supp. 2d 950, 958 (N.D. Iowa 2007) (“Finally, the court shall not tax the cost of the Realtime Trial Transcripts. The court finds these transcripts were obtained for the convenience of McGraw-Hill's attorneys, and they were not necessary for use in the case.”); *see In re Greater Se. Cmty. Hosp. Corp. I*, No. 02-02250, 2012 WL 1414841, at *3 (Bankr. D.D.C. Apr. 23, 2012) (“[T]he cost of obtaining a rough draft transcript of a deposition as a form of expedited transcript ordinarily ought to be disallowed.”).

Here, CH₂O includes thousands of dollars of Realtime and rough draft costs. The table below outlines those costs in each deposition. Most of CH₂O's receipts itemize these costs. Five receipts, however, list Realtime services and rough draft transcripts but do not itemize the cost. (Dkt. 416-2 at 32-25, 42.) CH₂O bears the burden to prove its costs, and these receipts falls short of that burden. *See* Local Rule 54-2.2.

Notwithstanding, to estimate the Realtime and rough draft cost in those non-itemized receipts, Defendants (1) calculated the average cost of Realtime and rough draft services as a percentage of the total transcript cost in the itemized receipts—21% for Realtime and 22% for rough draft respectively—and (2) applied that percentage to the non-itemized receipts. Those estimates are indicated below.

Pg Dkt. 416-2	Deponent	Total Cost	Realtime	Rough Draft
27	Casey Houwling	\$ 3,791.11	\$ 570.50	\$ 505.30
28	Casey Houwling	\$ 2,187.04	\$ 304.50	\$ 269.70
29	William Schmidt	\$ 2,343.55	\$ 616.00	--
30	Bryan O'Connell	\$ 1,744.90	--	\$ 427.80
31	Christopher Binfield	\$ 2,449.15	--	\$ 595.20
32	Christopher Binfield	\$ 3,597.25	\$ 755.42 (estimate)	\$ 791.40 (estimate)
33	Ion Sfetcu	\$ 4,178.25	\$ 877.43 (estimate)	\$ 919.22 (estimate)
34	Christopher Brocklesby	\$ 2,359.65	\$ 495.53 (estimate)	\$ 519.12 (estimate)

Pg Dkt. 416-2	Deponent	Total Cost	Realtime	Rough Draft
35	Casey Houwling	\$ 2,747.10	\$ 576.89 (estimate)	\$ 604.36 (estimate)
36	Carl Iverson	\$ 1,345.00	--	\$ 417.00
37	Joyce Prindle	\$ 1,081.70	--	\$ 340.20
38	Anthony McNamara	\$ 1,254.95	--	\$ 333.45
39	Robert Gore	\$ 366.50	--	\$ 99.00
40	Kimberly Graham	\$ 660.00	--	\$ 171.00
41	Slav Hermanowicz	\$ 1,211.14	--	\$ 411.25
42	Richard Bernier	\$ 1,242.50	\$ 260.93 (estimate)	\$ 273.35 (estimate)
43	Casey Houwling	\$ 2,220.10	\$ 568.75	--
44	Shawn Hagerty	\$ 1,151.00	--	\$ 280.00
46	Bernard Bubnis	\$ 3,042.55	\$ 603.75	\$ 534.75
47	Micah Siegel	\$ 2,940.65	\$ 770.00	--
48	Defroest McDuff	\$ 1,127.50	--	\$ 279.00
			\$ 6,399.70	\$ 7,771.10
			Total Combined	\$ 14,170.79

Overall, CH₂O includes \$14,170.79 of unrecoverable Realtime and rough draft costs. Defendants object to those costs and request the Court to deduct that amount from CH₂O's application.

D. Reporter's Transcripts

Local Rule 54-3.4 allows the prevailing party to recover the cost of a trial transcript "if requested by the Court or prepared pursuant to stipulation." Indeed, courts have found that "[t]here is a general presumption to deny awards of costs for transcripts when they are not created through a court order or a stipulation." *See Gunchick v. Fed. Ins. Co.*, No. CV 14-1162, 2015 WL 4451041, at *1 (C.D. Cal. July 17, 2015) (citation omitted); *see also Andresen v. Int'l Paper Co.*, No. 2:13-CV-02079, 2015 WL 3648972, at *6 (C.D. Cal. June 10, 2015) ("Generally, daily trial transcript costs should not be awarded absent court approval prior to the trial."). The only exception is "if the case is complex and the transcripts proved invaluable to both the counsel and the court." *Gunchick*, 2015 CL 4451041 at *1.

1 Here, while CH₂O incurred trial transcript costs absent any court order or
2 stipulation, Defendants note that the parties have now agreed to utilize one joint
3 transcript for purposes of post-trial motions, for the convenience of the Court.
4 Accordingly, while it may be appropriate for Defendants to bear ½ the cost of
5 the trial transcript, Defendants object to any trial transcript costs beyond that
6 amount. This includes the rough draft transcript costs. Local Rule 54-3.4 does
7 not include rough draft transcripts. Indeed, courts have found that rough draft
8 transcripts are not recoverable. *See In re Greater Se. Cmty. Hosp.*, WL
9 1414841, at *3 (“Charges for expedited transcripts ordinarily ought to be
10 disallowed as costs to the extent that they exceed the court reporter's standard
11 rate.”); *see also Pan Am. Grain Mfg. Co. v. Puerto Rico Ports Auth.*, 193 F.R.D.
12 26, 34 (D.P.R. 2000) (stating that the additional costs for an expedited trial
13 transcript should not be permitted where a party “had ample representation
14 during trial, and their attorneys could have taken day-to-day notes on the
15 proceedings”).

16 Here, CH₂O includes costs for a “clean rough same day” transcript for
17 each day of trial. (Dkt. 461-2 at 23.) CH₂O’s receipts, however, are not
18 itemized, making it impossible to identify the exact amount of the rough draft
19 costs, as opposed to the trial transcripts. (*Id.*) CH₂O bears the burden to prove
20 its costs, and these receipts falls short of that burden. *See* Local Rule 54-2.2.

21 Notwithstanding, to estimate those costs, Defendants assumed that rough
22 drafts of trial transcripts cost the same as rough draft deposition transcripts, then
23 (1) calculated the average cost of rough draft transcripts as a percentage of the
24 total transcript cost in the deposition receipts (22%) and (2) applied that
25 percentage to the trial transcript costs (\$18,855.66). This produced an estimate
26 of \$4,148.25 in rough draft costs for CH₂O. The remaining amount of
27 \$14,707.41 for the trial transcript itself is, as noted above, properly split
28 between CH₂O and Defendants, \$7,353.70 each. Accordingly, Defendants

1 object to the costs for CH₂O's rough drafts in the amount of \$4,148.25 and
2 CH₂O's portion of the trial transcript in the amount of \$7,353.70, and request
3 the Court to deduct the total amount of \$11,501.95 from CH₂O's application.

4 **E. Witness Fees**

5 Local Rule 54-3.6 allows the prevailing party to recover the cost of
6 witnesses attending the proceedings. The rule, however, does *not* include any
7 costs for witnesses to stay before or after the trial. Indeed, courts have found
8 that witness fees are not recoverable for preparation time. *See Smith v. Chicago*
9 *Transit Auth.*, No. 12 C 8716, 2015 WL 2149552, at *5 (N.D. Ill. May 6, 2015)
10 (“[B]ecause witness fees do not include preparation time, the CTA may not
11 recover costs for the travel expenses incurred by Mr. Cook to prepare for his
12 trial testimony.”).

13 Here, CH₂O lists costs relating to four witnesses for a six-day trial. Two
14 witnesses account for six days of travel per person for five days of trial each.
15 The average cost per day was \$222.00. Defendants do not object to these costs.
16 However, CH₂O's other two witnesses—Slav Hermanowicz and Deforest
17 McDuff—account 16 days and 9 days of travel per person respectively, despite
18 only attending 8 days of trial combined. This amounts to 17 extra days of travel
19 and to \$3,774.00 in costs that are not associated with their attendance at trial.
20 (Dkt. 461-2 at 49.) Defendants object to these costs and request the Court to
21 deduct \$3,774.00 from CH₂O's application.

22 **F. Certification, Exemplification and Reproduction of Document**

23 Local Rule 54-3.10 allows the prevailing party to recover “[d]ocument
24 preparation costs,” and lists the specific costs that are recoverable. That list,
25 however, does *not* include copies of documents to prepare for depositions.

26 Here, CH₂O includes \$3,909.90 for copies to prepare for depositions.
27 (Dkt. 461-2 at 50-55, 68-69, 71, 77, 84) One set of copies cost over \$1,200.00.
28 (*Id.* at 77.) And several receipts explicitly state that the copies are for “Depo

1 Prep.” (*Id.* at 68, 77.) These copies are not recoverable costs under Rule 54-
2 3.10. And CH₂O has not proven that the copies were otherwise necessary.
3 Defendants object to the extra costs for copies related to deposition preparation
4 and request the Court to deduct \$3,909.90 from CH₂O’s application.

5 **III. CONCLUSION**

6 Overall, CH₂O includes \$33,806.64 in costs that are not recoverable. The
7 Court should deny CH₂O those costs and deduct that amount from CH₂O’s
8 application.

9
10 Respectfully submitted,
11 KNOBBE, MARTENS, OLSON & BEAR, LLP
12 Dated: November 2, 2016

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14 By: /s/ Paul A. Stewart
15 Paul A. Stewart
16 Michael K. Friedland
17 Lauren Keller Katzenellenbogen
18 Attorneys for Defendant
19 MERAS ENGINEERING, INC.
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27
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1
2 By: /s/ Kristine E. Johnson

3 C. Kevin Speirs
4 Kristine E. Johnson
5 PARSONS BEHLE & LATIMER

6 Jaye G. Heybl
7 KOPPEL PATRICK HEYBL & PHILPOTT

8 Attorneys for Defendants
9 HOUWELING'S NURSERIES
10 OXNARD, INC.;
11 HNL HOLDINGS LTD.; HOUWELING UTAH
12 OPERATIONS, INC.; AND
13 HOUWELINGS NURSERIES LTD.
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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of November, 2016, a true and correct copy of the foregoing was served via the Court's ECF system on all counsel of record.

/s/ Kristine E. Johnson
Kristine E. Johnson